

ELISA G. MASSOTH, PLLC
A T T O R N E Y A T L A W

October 27, 2020

Kathleen Elliott, Executive Director
PDC Commissioners
Public Defense Commission
Boise, Idaho 83702

Re: Comment on Rule Changes October 2020

Dear Director Elliott and Commissioners,

I am an attorney in private practice in Payette. I am on the capital defense roster as second chair counsel and I have done conflict public defense for Payette, Washington, Adams, Ada, Owyhee, Canyon, Elmore, Boise, and Bonneville Counties.

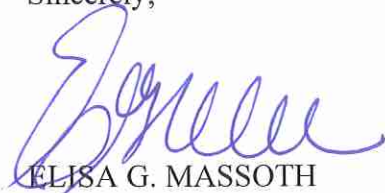
I write to object to the Public Defense Commission's ("PDC") proposed new rules. My primary concerns are the drastic change in the rules that come as a surprise in a system I was led to believe was a collaborative process. At its creation, I understood that the main goals of the Public Defense Commission were to create equalization between the prosecution and defense in funding, as well as promote excellence in indigent defense practice. The proposed rules, which have changed from the first version I read in September, 2020, to a different version in October, 2020, are heavily focused on enforcement and power to remove attorneys from rosters or even completely take over a county's public defense system. I am concerned by this sudden shift in focus of the PDC. Understanding the proposed rule changes has been a significant undertaking because no red-line version is available on the website. The only way to compare the current rules to the proposed rules is by physically laying the rules side by side and trying to compare section by section, while looking back and forth between terms with definitions. This is not a transparent way for such significant changes to be proposed and it has made it hard to interpret the proposed changes.

My commitment to indigent defense and support of requiring excellence in such practice has given me the perspective that the PDC rules and compliance monitoring that exist now, while cumbersome, are worth the end product. I do not read the newly proposed rules in the same light. The newly proposed rules put immense power in one person. I have great respect for the current executive director. But I fear immense power in the hands of one person written into a set of rules that will last much longer than one person. Since inception, the PDC has had three executive directors. Each of them has done a great job, but not until now in this rule proposal has there been such suggestion of creation of great power in the hands of the executive director.

Attorneys have many controlling standards they must follow. The Idaho State Bar has professional standards, licensing standards, malpractice insurance requirements, and continuing legal education requirements. To do capital defense, attorneys must follow the ABA standards as well as the current PDC rules which have very specific requirements and standards. In addition to these standards, the newly proposed rules put power in the hands of one person to remove an attorney from being on the PDC roster and the capital roster.

I encourage you to take a step back, produce a redline version of changes, negotiate the changes with stakeholders and create due process that invokes more than the power of a single person within the system you seek to change.

Sincerely,



ELISA G. MASSOTH